

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BCO-093

No. 23-2969

Fulton County, et al,
Appellants

v.

Dominion Voting Systems Inc, et al

(M.D. Pa. No. 1-22-cv-01639)

Present: SHWARTZ, CHUNG and SMITH, Circuit Judges

1. Clerk Order advising that the case has been listed for possible dismissal;
2. Response filed by Appellees to clerk order;
3. Response filed by Appellants to clerk order;
4. Motion filed by Appellees to dismiss case;
5. Response filed by Appellants to Motion to Dismiss case.

Respectfully,
Clerk/amr

ORDER

Appellees' motion to dismiss is granted and the appeal is hereby dismissed for lack of appellate jurisdiction. This Court's jurisdiction is generally confined to appeals from final decisions of the district court. See 28 U.S.C. § 1291. "A 'final decision' is 'one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Weber v. McGrogan, 939 F.3d 232, 236 (3d Cir. 2019). "[T]he proceedings in a district court must be final as to [. . .] all causes of action and parties." Morton Int'l, Inc. v. A.E. Staley Mfg. Co., 460 F.3d 470, 476 (3d Cir. 2006). Here, the District Court dismissed portions of Appellants' complaint without prejudice and provided them leave to file an amended complaint, which they did. As the case is ongoing in District Court, the order appealed is not final under 28 U.S.C. § 1291 or otherwise appealable at this time. See Borelli v. City of Reading, 532 F.2d 950, 951–52 (3d Cir. 1976); see also Weber, 939 F.3d at 237–41. Nor does the order fall under the collateral order exception. Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546

(1949). If the issues are properly preserved, Appellants may seek review of the interlocutory decision once final judgment is entered in the District Court. See U.S. ex rel Atkinson v. PA Shipbuilding Co., 473 F.3d 506, 516-17 (3d Cir. 2007).

By the Court,

s/ Cindy K. Chung

Circuit Judge

Dated: April 19, 2024

Amr/cc: All counsel of record



A True Copy:

Patricia A. Dodszeweit

Patricia S. Dodszeweit, Clerk

Certified Order Issued in Lieu of Mandate